

Article 8: Minors

**Division 3: Restricting the Sale, Advertising and Promotion
of Tobacco Products to Minors**

*(“Restricting the Sale, Advertising and Promotion
of Tobacco Products to Minors,”
added 10-20-1998 by O-18597 N.S.)*

§58.0301 Definitions

For purposes of this Division:

“Advertising” means printed matter that calls the public’s attention to things for sale.

“Advertising display sign” means a sign, sign-board, billboard, poster, or banner that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, or a building, or is displayed in the windows of a commercial establishment, and that is used to advertise or promote products.

“Arcade” has the same meaning as in Municipal Code section 33.1635.

“Child care center” has the same meaning as in Municipal Code section 101.0101.0102 or its successor.

“City” has the same meaning as in Municipal Code section 11.0210.

“Director” has the same meaning as in Municipal Code section 11.0210.

“Library” means any public library operated by the City of San Diego.

“Person” has the same meaning as in Municipal Code section 11.0210.

“Playground” means any outdoor premises or grounds owned or operated by the City, a public or private school, child care center, youth or recreational center, that contains any play or athletic equipment used or intended to be used by minors.

“Promotion” includes a display of any logo, brand name, character, graphics, colors, scenes, or designs that are trademarks of a particular brand of tobacco product, on any door, sign, poster, banner, pamphlet or other paper, clock,

display, display rack, ashtray, trash can, t-shirt or other clothing, lighter or other device.

“Publicly visible location” means any location that is open to or visible to the public from any street, sidewalk, or other public thoroughfare, and includes the placement of outdoor signs such as billboards, signs attached to poles, posts or other fixtures, signs attached to the outside of buildings, signs placed in the windows or doors of buildings that are visible to passers-by, and free-standing signs on the sidewalk.

“Recreation center or facility” means any recreation center or facility under the control, direction or management of the City.

“School” means any public or private elementary or secondary school, attendance at which satisfies the compulsory education laws of the State of California.

“Self-service display” means an open display of tobacco products that the public has access to without the intervention of an employee.

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco.

“Vendor-assisted” means that only a store employee has access to the tobacco product and assists a customer by supplying the product, and the customer does not take possession of the product until it is purchased.

(“Definitions” added 10-20-1998 by O-18597 N.S.)

§58.0302 Measure of Distance

The distance between any advertising display sign or any store or business that sells tobacco products and any school, playground, recreation center or facility, child care center, arcade, library, or non-commercial or non-industrial zone shall be measured in a straight line, without regard to intervening structures, from the advertising display sign or store or business to the closest property line of the school, playground, recreation center or facility, child care center, arcade, or library, or to the closest boundary of the zone.

(“Measure of Distance” added 10-20-1998 by O-18597 N.S.)

§58.0303 Advertising Restrictions

- (a) Except as expressly set forth in Section 58.0304, it is unlawful for any person, business, or tobacco retailer to place or maintain, or cause to be placed or maintained, any advertising or promotion of tobacco products on an advertising display sign in a publicly visible location.
- (b) Except as provided in Section 58.0305, this section does not apply to advertising or promotions for tobacco products located inside commercial establishments.

(“Advertising Restrictions” added 10-20-1998 by O-18597 N.S.)

§58.0304 Exceptions to Advertising Restrictions

- (a) Section 58.0303(a) does not apply to any advertising display sign located:
 - (1) in an industrial zone (SR, M-IP, M-LI, M-SI, M-1, M-1A, M-1B, M-2, M-2A) or in a commercial zone designated CBD, CA-RR, C, C(PCOZ), C-1, or C-1(PCOZ); and
 - (2) more than 1000 feet from the premises of any school, playground, recreation center or facility, child care center, arcade, or library; and
 - (3) more than 1000 feet from the boundary of any zone that is not a designated commercial or industrial zone.
- (b) Section 58.0303(a) does not apply to commercial vehicles used for the primary purpose of transporting tobacco products.
- (c) Section 58.0303(a) does not apply to any public service message sponsored by a federal, state, or local government entity, or by a non-profit entity, designed to communicate the hazards of smoking or to encourage minors to refrain from smoking or buying tobacco products.
- (d) Section 58.0303(a) does not apply to signs that contain a generic description of tobacco products in black and white without logos or graphics.
- (e) Section 58.0303(a) does apply to signs at public facilities within the City’s jurisdiction unless an existing contract, entered into by the City for a private party’s use and occupancy of the facility, gives the private party control over the advertising rights on the facility premises.

(“Exceptions to Advertising Restrictions” added 10-20-1998 by O-18597 N.S.)

§58.0305 Location of Tobacco Products and Advertising Inside Retail Establishments

- (a) It is unlawful for any person, business, or tobacco retailer to place or maintain, or cause to be placed or maintained, any displays containing tobacco products, within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products and are located within 1000 feet of the premises of any school, playground, recreation center or facility, child care center, arcade, or library.
- (b) It is unlawful for any person, business, or tobacco retailer to place or maintain, or cause to be placed or maintained, any advertising display sign for tobacco products in any of the locations listed in Section 58.0305(b)(1)-(3) inside stores or businesses that sell tobacco products and are located within 1000 feet of the premises of any school, playground, recreation center or facility, child care center, arcade, or library:
 - (1) Below four feet from the floor; or
 - (2) Within two feet of candy, snack, or non-alcoholic beverage displays; or
 - (3) Posted on the inside or outside of the windows or doors of the business such that the advertising or promotion is visible to the public from outside the establishment.

(“Location of Tobacco Products and Advertising Inside Retail Establishments” added 10-20-1998 by O-18597 N.S.)

§58.0306 Exceptions to Location of Tobacco Products and Advertising Inside Retail Establishments

- (a) Section 58.0305(a) and Section 58.0305(b)(1) and (2) do not apply to commercial establishments where access to the premises by persons under eighteen years of age is prohibited by law;
- (b) Section 58.0305(a) does not apply to displays in any establishment that are located behind a counter and not accessible patrons;
- (c) Section 58.0305(b) does not apply to any public service message sponsored by a federal, state, or local government entity, or by a non-profit entity, designed to communicate the hazards of smoking or to encourage minors to refrain from smoking or buying tobacco products.

(“Exceptions to Location of Tobacco Products and Advertising Inside Retail Establishments,” added 10-20-1998 by O-18597 N.S.)

§58.0307 Identification Required for Purchase of Tobacco Products

It is unlawful for any person, business, or tobacco retailer to sell any tobacco product to an individual who appears to be less than twenty-seven years of age, without first verifying by means of photographic identification containing the bearer's date of birth, that the purchaser is not younger than eighteen years of age, unless the seller has some other reliable basis for determining the purchaser's age.

("Identification Required for Purchase of Tobacco Products" added 10-20-1998 by O-18597 N.S.)

§58.0308 Sale and Distribution of Tobacco Products

It is unlawful for any person, business, or tobacco retailer to sell, permit to be sold, offer for sale, or display for purposes of sale, by means of self-service displays or by any means other than vendor-assisted sales, any tobacco products.

("Sale and Distribution of Tobacco Products" added 10-20-1998 by O-18597 N.S.)

§58.0309 Distribution of Tobacco Samples or Promotional Items

It is unlawful for any person, business, or tobacco retailer to distribute free tobacco products or promotional items, except in enclosed areas where minors are not permitted.

("Distribution of Tobacco Samples or Promotional Items" added 10-20-1998 by O-18597 N.S.)

§58.0310 Posting of Signs Regarding Sales to Minors

(a) Every person who sells or deals in tobacco products shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of tobacco products to persons under eighteen years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to purchase tobacco products. The letters of the sign shall be at least one-half inch in height.

(b) Any sign meeting the content requirements of California Business and Professions Code section 22952(b) and regulations promulgated thereunder, and the posting requirements of California Penal Code section 308(c), satisfies Section 58.0310(a).

(c) It is unlawful for any person who sells or deals in tobacco products to fail to post a sign in accordance with Section 58.0310(a) or (b).

("Posting of Signs Regarding Sales to Minors" added 10-20-1998 by O-18597 N.S.)

§58.0311 Extensions for Compliance

- (a) Any business that needs to make modifications to its business premises in order to comply with Sections 58.0303, 58.0305, or 58.0308 of this Division, must comply within sixty calendar days after November 19, 1998.
- (b) Any business owner may apply to the City for a reasonable extension of time within which to comply with Sections 58.0303, 58.0305, or 58.0308 of this Division, provided that the application for extension is submitted on or before the last day of the sixty day compliance period.
- (c) An extension may be granted only for good cause for a maximum of one year from the effective date. "Good cause" means the extension is necessary to prevent the business from suffering unreasonable financial hardship, or to prevent unreasonable disruption in business operations.
(*"Extension for Compliance" added 10-20-1998 by O-18597 N.S.*)

§58.0312 Enforcement

- (a) Violations of this Division shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the fines and custody provided in Municipal Code Section 12.0201. Any Director may also seek injunctive relief and civil penalties pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.
- (b) Any person who commits or proposes to commit an act in violation of this division may be enjoined therefrom by a court of competent jurisdiction. An action for injunction may be brought by any aggrieved person, or any person or entity which will fairly and adequately represent the interests of the protected class.
- (c) Any plaintiffs who prevail in a civil action brought under this section shall be entitled to recover reasonable damages, costs, and attorneys' fees as determined by the court. In addition to all other damages, the court may award the plaintiffs a civil penalty of up to one thousand dollars (\$1,000.00) for each violation.
- (d) The remedies provided by this section are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.
(*"Enforcement" added 10-20-1998 by O-18597 N.S.*)